

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Pursuant to the authority of 2011 Iowa Code Supplement section 15.106A, the Economic Development Authority hereby amends Chapter 65, “Brownfield Redevelopment Program,” Iowa Administrative Code.

These amendments describe the administration of the brownfield redevelopment program and the redevelopment tax credit program for brownfields and grayfields.

Notice of Intended Action for the amendments was published in the September 7, 2011, Iowa Administrative Bulletin as **ARC 9747B**. The amendments were also Adopted and Filed Emergency and published as **ARC 9746B** on the same date and became effective August 19, 2011. Public comments were received in writing and in person at the hearing that was held September 27, 2011. Comments received were primarily regarding confusion about which rules apply to the two separate programs that the rules are intended to implement.

As a result of those comments, changes have been made to the amendments published under Notice of Intended Action and Adopted and Filed Emergency. Specifically, amendments have been added to rule 261—65.3(15) and rules 261—65.1(15) and 261—65.4(15) to 261—65.8(15) have been amended further in order to clarify which rules apply to each of the two programs. The title of the chapter was also changed to reflect the inclusion of grayfield properties as eligible for tax credits under the redevelopment tax credit program for brownfields and grayfields.

The Economic Development Authority Board adopted these amendments during the December 16, 2011, meeting.

After analysis and review of this rule making, no negative impact on jobs has been found.

These amendments are intended to implement 2011 Iowa Code Supplement sections 15.291, 15.292, 15.293A and 15.293B.

These amendments will become effective March 14, 2012, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend **261—Chapter 65**, title, as follows:

BROWNFIELD AND GRAYFIELD REDEVELOPMENT PROGRAM

ITEM 2. Amend rule 261—65.1(15) as follows:

261—65.1(15) Purpose. The brownfield redevelopment program is designed to provide financial and technical assistance for the acquisition, remediation, or redevelopment of brownfield sites. The redevelopment tax credit program for brownfields and grayfields is designed to provide financial assistance for the acquisition, remediation, or redevelopment of brownfield and grayfield sites.

ITEM 3. Amend rule **261—65.2(15)**, definitions of “Acquisition,” “Board” and “Qualifying investment,” as follows:

“*Acquisition*” means the purchase of brownfield or grayfield property.

“*Board*” means the ~~Iowa~~ economic development authority board pursuant to 2011 Iowa Code Supplement section ~~15.103~~ 15.102.

“*Qualifying investment*” means ~~the purchase price, cleanup cost(s), and redevelopment cost(s) costs that are~~ directly related to a qualifying redevelopment project and that are incurred after the project has been registered and approved by the board. “Qualifying investment” only includes the purchase price, the cleanup costs, and the redevelopment costs.

ITEM 4. Rescind the definition of “Department” in rule **261—65.2(15)**.

ITEM 5. Adopt the following new definition in rule **261—65.2(15)**:

“*Authority*” means the economic development authority.

ITEM 6. Amend rule 261—65.3(15) as follows:

261—65.3(15) Eligible applicants. To be eligible to apply for program assistance, an applicant must meet the following eligibility requirements:

65.3(1) *Site owner.* A person owning a site is an eligible applicant if the site for which assistance is sought meets the definition of a brownfield or grayfield site, ~~and the~~ The brownfield redevelopment program requires that an applicant has secured a sponsor prior to applying for program assistance. Sponsorship is encouraged but not required for the redevelopment tax credit program for brownfields and grayfields.

65.3(2) *Nonowner of site.* A person who is not an owner of a site is an eligible applicant if the site meets the definition of a brownfield or grayfield site, ~~and the~~ The brownfield redevelopment program requires that an applicant has secured a sponsor prior to applying for program assistance.

65.3(3) *Agreement executed.* ~~Prior to applying for financial assistance under this~~ the brownfield redevelopment program, an applicant who is not an owner of a site shall enter into an agreement with the owner of the brownfield site for which financial assistance is sought. The agreement shall at a minimum include:

- ~~1. a.~~ The total cost for remediating the site.
- ~~2. b.~~ Agreement that the owner shall transfer title of the property to the applicant upon completion of the remediation of the property. Title transfer is not required when the applicant is the owner of the property and no title transfer occurs.
- ~~3. c.~~ Agreement that upon the subsequent sale of the property by the applicant to a person other than the original owner, the original owner shall receive not more than 75 percent of the estimated total cost of the remediation, acquisition or redevelopment.

ITEM 7. Amend rule 261—65.4(15) as follows:

261—65.4(15) Eligible forms of assistance and limitations.

65.4(1) *Financial assistance.* Eligible forms of financial assistance ~~under this program~~ include grants, interest-bearing loans, forgivable loans, loan guarantees, tax credits, and other forms of assistance under the brownfield redevelopment program ~~and the redevelopment tax credit program for brownfields and grayfields established in 2011 Iowa Code section~~ Supplement sections 15.292 and 15.293A.

65.4(2) *Technical* Other forms of assistance. ~~Technical assistance under this program is available in the form of providing an applicant with assistance in identifying~~ The authority may provide information on alternative forms of assistance for which the applicant may be eligible.

65.4(3) *Limitation on amount.* An applicant shall not receive financial assistance of more than 25 percent of the agreed-upon estimated total cost of remediation, acquisition or redevelopment. This limitation does not apply to assistance provided in the form of tax credits pursuant to subrule 65.11(4).

65.4(4) *Exclusions.* Program funds shall not be used for the remediation of contaminants being addressed under Iowa's leaking underground storage tank (UST) program. However, a site's being addressed under the UST program does not necessarily exclude that site from being addressed under the Iowa brownfield redevelopment Act if other nonpetroleum contaminants or petroleum substances not addressed under 567—Chapter 135 are present.

ITEM 8. Amend rule 261—65.5(15) as follows:

261—65.5(15) Repayment to ~~IDED~~ economic development authority. ~~Upon~~ Under the brownfield redevelopment program only, upon the subsequent sale of the property by an applicant to a person other than the original owner, the applicant shall repay the ~~department~~ authority for financial assistance received by the applicant. The repayment shall be in an amount equal to the sales price less the amount paid to the original owner pursuant to the agreement between the applicant and the original owner. The repayment amount shall not exceed the amount of financial assistance ~~received by~~ actually disbursed to the applicant by the authority.

ITEM 9. Amend rule 261—65.6(15) as follows:

261—65.6(15) Application and award procedures.

65.6(1) Subject to availability of funds, applications to the brownfield redevelopment program will be reviewed and rated by ~~IDED~~ economic development authority staff ~~on an ongoing basis and reviewed quarterly~~ by the advisory council on an annual basis. Brownfield redevelopment funds will be awarded on a competitive basis.

65.6(2) Subject to availability of funds, applications to the redevelopment tax credit program for brownfields and grayfields will be reviewed by economic development authority staff and the advisory council on a monthly basis.

65.6(3) Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. Recommendations from the advisory council will be submitted to the board. The board may approve, deny or defer an application.

ITEM 10. Amend rule 261—65.7(15) as follows:

261—65.7(15) Application.

65.7(1) Every application for assistance shall include, ~~but not be limited to,~~ evidence of sponsorship and any other information the authority deems necessary in order to process and review the application. An application shall be considered received by the authority only when the authority deems it to be complete. ~~In addition, applications~~ Applications for assistance ~~other than tax credits~~ shall also include the following information:

a. A business plan. The business plan should, at a minimum, include a remediation plan, a project contact/applying agency, a project overview (which would include the background of the project area, goals and objectives of the project, and implementation strategy), and a project/remediation budget.

b. A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

65.7(2) ~~The department authority shall accept applications and determine application eligibility~~ review applications in conjunction with the council and the board. The council shall consider applications in the order complete applications are received and make application recommendations to the board. The board shall approve or deny applications.

65.7(3) Upon review of the application for the redevelopment tax credit program for brownfields and grayfields, the authority may register the project under the program. If the authority registers the project, it shall, in conjunction with the council and the board, make a preliminary determination as to the maximum amount of the tax credit for which the investor qualifies. After registering the project, the authority shall issue a letter notifying the investor of successful registration under the program. The letter shall include the maximum amount of tax credit for which the investor has received preliminary approval and shall state that the amount is a preliminary determination only. The preliminary determination is not a contract, contract term, promise, guarantee, assurance, or representation of the actual tax credit the investor will receive or should expect to receive. The preliminary determination is a nonbinding figure, provided purely for the investor's and the authority's information and convenience, based on the authority's existing understanding and estimates related to the project. The amount of tax credit included on a certificate issued pursuant to this subrule shall be contingent upon completion of the requirements of subrules 65.7(4) to 65.7(6) and shall be based solely on completion and compliance with all terms and conditions of the contract pursuant to this rule, rule 261—65.10(15), and 2011 Iowa Code Supplement sections 15.293A and 15.293B.

~~65.7(3)~~ **65.7(4)** Approved applicants shall enter into an agreement with the department authority. The agreement for the redevelopment tax credit program for brownfields and grayfields shall specify the requirements necessary in order to receive tax credit and the maximum amount of tax credit available. The agreement for the brownfield redevelopment program shall specify the requirements necessary in order to receive benefits under the program.

65.7(5) Upon completion of a registered project under the redevelopment tax credit program for brownfields and grayfields, an audit of the project's qualifying expenses shall be completed by an independent certified public accountant licensed in the state of Iowa and shall be submitted to the authority.

~~65.7(4)~~ **65.7(6)** ~~The department shall issue a tax credit certificate upon~~ Upon written notification of project completion from the investor, the authority will review the independent audit, verify the amount of the qualifying investment and issue a redevelopment tax credit certificate to the investor in the amount of the tax credit for which the investor is entitled under its contract with the authority.

ITEM 11. Amend rule 261—65.8(15) as follows:

261—65.8(15) Application forms. Application forms for the brownfield redevelopment program and the redevelopment tax credit program for brownfields and grayfields shall be available upon request from ~~IED~~ Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. ~~IED~~ The authority may provide technical assistance as necessary to applicants. ~~IED~~ Authority staff may conduct on-site evaluations of proposed activities.

ITEM 12. Amend subrules 65.10(1), 65.10(2) and 65.10(5) as follows:

65.10(1) A contract shall be executed between the recipient and ~~IED~~ the authority. These rules and applicable state laws and regulations shall be part of the contract.

65.10(2) The recipient must execute and return the contract to ~~IED~~ the authority within 45 days of transmittal of the final contract from ~~IED~~ the authority. Failure to do so may be cause for the board to terminate the award.

65.10(5) Awards may be conditioned upon ~~IED's~~ the authority's receipt and approval of an implementation plan for the funded activity.

ITEM 13. Amend subrule 65.11(1) as follows:

65.11(1) Purpose. The purpose of the redevelopment tax credit program is to make tax credits available for a redevelopment project investment. The ~~department~~ authority may cooperate with the department of natural resources and local governments in an effort to disseminate information regarding the redevelopment tax credit.

ITEM 14. Amend paragraph **65.11(3)“a”** as follows:

a. *Issuance.* The ~~department~~ authority shall issue a redevelopment tax credit certificate upon completion of the project and submittal of proof of completion by the qualified investor. The tax credit certificate shall contain the qualified investor's name, address, tax identification number, the amount of the credit, the name of the qualifying investor, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

ITEM 15. Amend paragraph **65.11(4)“d”** as follows:

d. *Maximum credit total.* For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued by the ~~department~~ authority shall not exceed \$1 million. For the fiscal year beginning July 1, 2011, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the board but not in excess of \$5 million. ~~The department shall not issue tax credits pursuant to this rule in subsequent fiscal years unless authorized pursuant to this subrule.~~

ITEM 16. Amend subrules 65.11(7) to 65.11(10) as follows:

65.11(7) Project completion.

a. An investment shall be deemed to have been made on the date the qualifying redevelopment project is completed. An investment made prior to January 1, 2009, ~~or after June 30, 2010~~, shall not qualify for a tax credit under this rule.

b. ~~A qualifying redevelopment project not completed within 30 months after board approval shall not be eligible for a tax credit pursuant to this rule. The board has the discretion to allow an additional 12-month extension period to complete a project. A registered project shall be completed within 30 months of the project's approval unless the authority, with the approval of the board, provides additional~~

time to complete the project. A project shall not be provided more than 12 months of additional time. If the registered project is not completed within the time required, the project is not eligible to claim a tax credit.

c. Failure to comply. If a taxpayer receives a tax credit pursuant to 2011 Iowa Code Supplement section 15.293A but fails to comply with any of the requirements, the taxpayer loses any right to the tax credit. The Iowa department of revenue shall seek recovery of the value of the credit the qualified investor received.

65.11(8) *Tax credit carryover.* If the maximum amount of tax credits available has not been issued at the end of the fiscal year, the remaining tax credit amount may be carried over to a subsequent fiscal year or the ~~department~~ authority may prorate the remaining credit amount among other eligible applicants.

65.11(9) *Department Authority registration and authorization.* The ~~department~~ authority shall develop a system for registration and authorization of tax credits. The ~~department~~ authority shall control distribution of all tax credits distributed to investors, including developing and maintaining a list of tax credit applicants from year to year to ensure that if the maximum aggregate amount of tax credits is reached in one year, an applicant can be given priority consideration for a tax credit in an ensuing year.

65.11(10) *Other financial assistance considerations.* If a qualified investor has also applied to the ~~department~~ authority, the board, or any other agency of state government for additional financial assistance, the ~~department~~ authority, the board, or the agency of state government shall not consider the receipt of a tax credit issued pursuant to this rule when considering the application for additional financial assistance.

ITEM 17. Amend rule 261—65.12(15) as follows:

261—65.12(15) Council Review, approval, and repayment requirements of redevelopment tax credit.

65.12(1) A qualified investor seeking to claim a tax credit pursuant to 2011 Iowa Code Supplement sections 15.293A and 15.293B shall apply to the ~~council~~, authority, and applications shall be reviewed by the council as established in 2011 Iowa Code Supplement section 15.294. The council shall recommend to the board the tax credit amount available for each qualifying redevelopment project.

65.12(2) A qualified investor shall provide to the authority, the council with and the board all of the following:

a. Information showing the total costs of the qualifying redevelopment project, including the costs of land acquisition, cleanup, and redevelopment.

b. Information about the financing sources of the investment which is directly related to the qualifying redevelopment project for which the taxpayer is seeking approval for a tax credit, as provided in 2011 Iowa Code Supplement section 15.293A.

ITEM 18. Amend **261—Chapter 65**, implementation sentence, as follows:

These rules are intended to implement 2011 Iowa Code Supplement sections 15.291 to 15.295.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.